

WETLANDS COUNCIL

MINUTES

August 28, 2018

The Wetlands Council met on Tuesday, August 28, 2018 in Rooms 112, 113, 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Lee Carbonneau, Jim Gove, Carol Henderson, Michael Klass, Deborah Lievens, Richard Mellor, Russ St. Pierre, Seth Prescott, Wendy Weisiger and Gretchen Young

Absentee: Councilor: Bob Wolff

Also present were: Carolyn Guerdet, Council Clerk and Paula Scott, Appeals Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 9:00 a.m. with introductions and a quorum present.

1. **Introduction**

Review of today's schedule. First there will be a short standard meeting with a discussion with the auditor then Deliberations to start at 10:30. Proposed Wetlands Rules to be given by Mary Ann Tilton after lunch.

2. **Approval of Minutes**

- ***Councilor Gove made a motion to approve the August 14, 2018 meeting minutes as corrected, second by Councilor Henderson. Motion passed unanimously.***

3. **Public Input:** None

4. **Status of Appeals**

Paula Scott reviewed the following:

I. New Appeals

II. Decisions that need to be written/finalized and issued.

Docket No. 17-16 WtC – Bryan and Linda Corr Appeal

Subject: 11/03/17 Administrative Order No. 17-028 WD

Hearing Officer: January 18, 2018 David Conley was appointed by AG

Status: November 30, 2017 received Petition for Appeal and Appearance of John Cronin. December 4, 2017 issued receipt of Appeal letter. 12/29/17 received the Appearance of Joshua Harrison for the Department. Council to accept or deny Appeal at their January 9th meeting. January 10, 2018 issued Appeal accepted letter. 1/25/18 issued Notice of Pre-hearing Conference scheduled for February 14, 2018 at 11 a.m. 2/14/18 issued Pre-hearing Order scheduling hearing for April 10, 2018 at 9 a.m. 2/22/18 received State's Motion to Dismiss. March 14, 2018 received Petitioner's Objection to Motion to Dismiss. 3/22/18 issued Notice of Rescheduled Hearing moving hearing to May 8th at 9 a.m. 3/28/18 received Assented-To Motion to Continue Deadlines. April 2, 2018 issued letter granting Assented-To Motion to Continue Deadlines. 4/11/18 issued Order granting in part and denying in part State's Motion to Dismiss. 4/30/18 received State's Witness and Exhibit List. May 2, 2018 received Appellants' Witness and Exhibit List. 5/8/18 Hearing was held and Deliberations are scheduled for today, June 12, 2018. 5/25/18 received State's Proposed Findings of Fact and Conclusions of Law. 5/29/18 received Appellant's Requests for Finding and Rulings. Deliberations were held June 12, 2018. August 6, 2018 issued Decision and Order granting Petition for Appeal.

Docket No. 17-13 WtC – Kelly Connolly, et al Appeal

Subject: 08/28/17 approval of permit #2017-01434 issued to Mark and Teresa Richey
Hearing Officer: February 26, 2018 David Conley was appointed by AG
Status: September 28, 2017 received Notice of Appeal. 9/29/17 issued receipt of Appeal letter. October 5, 2017 received Appearance of Russell Hilliard for the permittees. 10/17/17 received Motion for summary Dismissal. 10.27.17 received Reply and Objection to Motion for Summary Dismissal and Provisional Motion to Extend Time for Appeal. 10/31/17 Reply to Objection for Summary Dismissal and Objection to Provisional Motion to Extend Time for Appeal.. November 6, 2017 received Replication regarding Motion for Summary Dismissal and Provisional Motion to Extend Time for Appeal. 11/15/17 received Further Response to Appellants' Replication. Please note the Appeal appears to be untimely and in correctly addressed therefore, the Council may have to determine whether the Appeal was or was not timely filed. Discussion was January 9, 2018 Council declined to accept Appeal as untimely. 1/12/18 issued Ruling on Acceptance of Appeal and Motion to Summarily Dismiss. 1/18/18 received Appellants' Motion for Rehearing and reconsideration. 1/22/18 received Objection to Appellants' Motion for Rehearing and Reconsideration. February 13, 2018 Council granted Motion for Rehearing and Reconsideration. 2/16/18 issued Ruling on Motion for Rehearing and Reconsideration. March 7, 2018 issued Notice of Pre-hearing Conference scheduled for April 2, 2018 at 9 a.m. 3/13/18 received Permittees Motion for Rehearing and Reconsideration. 3/20/18 received Appellants' Objection to Motion for Rehearing and Reconsideration. 3/26/18 received Appellants' Witness and Exhibit Lists. 3/30/18 issued Ruling Denying Permittees' Motion for Rehearing and Reconsideration. April 2, 2018 issued Pre-hearing Order scheduling hearing for August 14, 2018 at 9 a.m. 4/6/18 received Permittees' Witness and Exhibit Lists. 4/30/18 received Appearance of Atty. Brooks. July 16, 2018 received Motion to Exclude Irrelevant and Immaterial Evidence. 7/24//2018 received Appellants' Objection to Motion to Exclude Irrelevant and Immaterial Evidence. August 6, 2018 issued letter granting Objection to Exclude Certain Evidence. 8/14/18 Hearing was held. 8/21/18 received Assented to Stipulation Regarding the Record. Deliberations are scheduled for today, 8/28/18 at 10:30 a.m.

III. Hearings or PHCs Pending

Docket No. 17-10 WtC – Patricia A. Rose Appeal

Subject: 06/15/17 approval of Wetlands Permit #2015-03134 issued to Frank and Laurie Leichthammer
Hearing Officer: Not Assigned
Status: July 14, 2017 received Petition for Appeal. 7/17/17 sent Insufficient Appeal letter. August 16, 2017 received Revised Petition for Appeal. 8/17/17 issued Receipt of revised Appeal letter. 8/30/17 received Appearance of Abigail Karoutas and Christopher Wyskiel for permittee and Motion for Summary Dismissal. October 6, 2017 received Response to Motion for Summary Dismissal. Council to accept or deny Appeal at their October 10, 2017 meeting. 10/10/17 Appeal accepted and denied the Motion for Summary Dismissal. 10/11/17 issue ruling accepting Appeal and Denying Motion for Summary Dismissal. 10/25/17 issued Notice of Pre-Hearing Conference scheduled for November 13, 2017 at 9 a.m. 11/7/17 received withdrawal of Abigail Karoutas and Christopher Wyskiel. 1/13/17 issued Pre-hearing Order scheduling Hearing for January 9, 2018 at 9 a.m. 11/20/17 issued Order on permittees' Motion for Summary Dismissal. December 1, 2017 received permittees' response on the Permittees' Response on the Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/11/17 issued Order on Permittees' Response on Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/13/17 received Permittee's Witness and Exhibit List. 12/18/17 received Appellant's Witness and Exhibit List. January 9, 2018 received Appearance from Mary Ann Tilton for the Department. Hearing was held on January 9, 2018 and continued until March 13, 2018 at 9 a.m. January 18, 2018 received Appellant's Witness and Exhibit List. Motion to Remand received on 1/23/18. 1/30/18 issued Ruling on Motion to Remand, which was granted. Appeal is stayed and continued hearing scheduled for March 13, 2018 is cancelled. February 8, 2018 received Motion for Reconsideration. February 20, 2018 received Response to Motion for Reconsideration. 2/21/18 issued letter denying Motion for Reconsideration. Appeal is stayed. Request for status update to be sent. August 14, 2018 received a copy of letter from Appellant to Collis Adams. 8/23/18 issued letter giving Appellant 30 days to file a revised appeal. Discussion was held.

Docket No. 18-03 WtC – New Castle Conservation Commission Appeal

Subject: 1/16/18 approval of Wetlands Permit No. 2017-00487 issued to Marion Clough
Hearing Officer: May 14, 2018 David Conley was appointed by AG.
Status: February 15, 2018 received Notice of Appeal. 2/20/18 issued Insufficient Appeal letter. March 21, 2018 received revised Petition for Appeal. 3/22/18 issued receipt of revised Appeal letter. April 10, 2018 received

Appearance of Jonathan Springer for the permittee and a Motion for Summary Dismissal. 4/13/18 received Appearance of Nathaniel Morse for the appellant. 4/16/18 received Appellant's Objection to Motion for Summary Dismissal. Council accepted Appeal May 8, 2018. 5/11/18 issued Ruling on Acceptance of Appeal and Motion to Summarily Dismiss. 5/22/18 issued notice of Pre-hearing Conference scheduled for June 13, 2018 at 3 p.m. June 13, 2018 issued Pre-hearing Order scheduling hearing for January 8, 2019 at 9 a.m.

Docket No. 18-05 WtC – David and Beth Boucher, Trustees Appeal

Subject: 2/15/18 Administrative Order No. 18-004 WD

Hearing Officer: May 14, 2018 David Conley was appointed by AG.

Status: February 26, 2018 received Petition for Appeal and issued Insufficient Appeal letter. March 22, 2018 received Revised Petition for Appeal. 3/26/18 issued receipt of revised Appeal letter. Council accepted Appeal May 8, 2018. 5/11/18 issued Appeal accepted letter. 5/22/18 issued notice of Pre-hearing Conference scheduled for June 13, 2018 at 1 p.m. 5/22/18 received Appearance of Joshua Harrison for the department. 5/31/18 received insufficiently filed Motion to Extend Pre-hearing Conference. 6/4/18 issued letter denying Motion to Extend PHC. June 13, 2018 issued Pre-hearing Order scheduling hearing for October 9, 2018 at 9 a.m.

Docket No. 18-07 WtC – Kreisler Family II, LLC Appeal

Subject: 3/7/18 Approval of Wetlands Permit #2017-03657 issued to David Brewster

Hearing Officer: 8/16/18 requested Hearing Officer be assigned.

Status: April 4, 2018 received Preliminary Notice of Appeal and offer to enter into settlement discussions. May 16, 2018 received Petition for Appeal. 5/17/18 issued Insufficient Appeal letter. June 13, 2018 received Revised Petition for Appeal. 6/26/18 received Appearance of Stephen Nix for the Permittee. July 3, 2018 received Motion to Summarily Dismiss. 7/9/2018 received Appellant's Objection to Motion to Summarily Dismiss. Council accepted Appeal at August 14, 2018 meeting. 8/16/18 issued Ruling granting Acceptance of appeal and denying Motion to Summarily Dismiss.

Docket No. 18-08 WtC – Kreisler Family II, LLC Appeal

Subject: 3/7/18 Approval of Wetlands Permit #2017-03659 issued to David Brewster

Hearing Officer: 8/16/18 requested Hearing Officer be assigned.

Status: April 4, 2018 received Preliminary Notice of Appeal and offer to enter into settlement discussions. May 16, 2018 received Petition for Appeal. 5/17/18 issued Insufficient Appeal letter. June 13, 2018 received Revised Petition for Appeal. 6/26/18 received Appearance of Stephen Nix for the Permittee. July 3, 2018 received Motion to Summarily Dismiss. 7/9/2018 received Appellant's Objection to Motion to Summarily Dismiss. Council accepted Appeal at August 14, 2018 meeting. 8/16/18 issued Ruling granting Acceptance of appeal and denying Motion to Summarily Dismiss.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

V. Misc.

Councilor St. Pierre requested to have a list started of remanded permits. Discussion was held.

4. New Business

Council then went into a Nonpublic Session under RSA 91-A:3, II(c)

- ***Councilor Henderson moved to go into nonpublic session, second by Councilor Gove. Roll Call vote was unanimous with all in attendance.***

Public Meeting recessed at 10.24 a.m.

- ***Councilor Henderson motioned to resume the regular meeting at 11:22 a.m., second by Councilor Carbonneau. Motion passed unanimously. It was noted that Councilors Prescott and Wolff were not present.***

4. New Business

b. Wetlands Initial Proposed Rules

Mary Ann Tilton, Assistant Wetlands Bureau Administrator, gave an update on the Wetlands Rules and they are going forward in rulemaking. Draft initial proposal to the Wetlands Council on September 11th. Over 2,000 comments have been received from approximately 56 commenters. Many public meetings and workgroup sessions have been held with one more meeting on Sept 5th. The department plans to begin initiating formal rulemaking before Sept 21st. She will email final draft initial proposal on Tuesday, September 4th for comments at meeting on the 11th. The goal is to show everyone the rules at the most final stage possible. Comments can still be made once rule making has formally started.

Mary Ann then began the more specific changes to the rules

- ***Councilor Lievens made a motion at 11:59 a.m. to recess until 12:40 p.m., second by Councilor Gove. Motion passed unanimously.***

Meeting reconvened at 12:41 p.m. Councilor Lievens arrived at 12:42

Clarification will be made with the department attorney as to the correct date of the beginning of rulemaking, September 4th or 11th.

Mary Ann continued with review of the rules. There have been so many changes/revisions. She highlighted the most significant changes here today. Any draft today is not the initial filing. They are continually trying to respond at this time.

Finalization of the BMPs is also being worked on.

Any comments, suggestions, are welcome.

Sept. 4th, she will be emailing the pre-submission proposals to the Council. Formal rulemaking to begin September 21st.

6. Old Business

7. Next Meeting –

The next meeting is September 11, 2018 at 9 a.m. with Assistant Commissioner Freise reviewing with Mary Ann Tilton the Wetlands and Shoreland Rules..

8. Adjournment

- ***Councilor Henderson made a motion to adjourn, second by Councilor St. Pierre. Motion passed unanimously.***

Meeting ended at 2:31 p.m.

WETLANDS COUNCIL
DELIBERATIVE SESSION MINUTES

August 28, 2018

T

The Wetlands Council met for
Docket No. 17-13 WtC – Kelly Connolly, et al. Appeal, Deliberative Session
Tuesday, August 28, 2018 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Lee Carbonneau, James Gove, Carol Henderson, Michael Klass, Deborah Lievens, Richard Mellor, Russ St. Pierre, Wendy Weisiger, Robert Wolff and Gretchen Young.

Also present was: Paula Scott, Appeals Clerk

The Deliberative Session was called to order by Hearings Officer David Conley, Esq., at 10:30 a.m. The Deliberative Session closed at 11:05 a.m.